

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANDREA COOPER,

Plaintiff,

MEMORANDUM AND ORDER

-against-

CV 11-4665 (LDW) (WDW)

HUNTINGTON UNION FREE SCHOOL
DISTRICT,

Defendant.

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WEXLER, District Judge

Plaintiff Andrea Cooper brings this action against defendant Huntington Union Free School District, asserting claims for pregnancy discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and disability discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*, and the New York City Human Rights Law, N.Y.C.R.R. § 8-101 *et seq.* Presently before the Court is plaintiff's objection to the Report and Recommendation ("R&R") of the magistrate judge, recommending that defendant's motion to dismiss under FRCP 12(b)(5) be granted. Familiarity with the R&R is assumed.

Upon consideration, the Court concludes that, in the exercise of discretion, plaintiff should be, and is, granted an extension of time for service through March 5, 2013, the date service was properly made in this action. In reaching its determination, the Court finds that, upon a weighing of the circumstances, an extension is warranted under

FRCP 4(m) even absent a showing of “good cause” by plaintiff, *see Zapata v. City of New York*, 502 F.3d 192, 195 (2d Cir. 2007), particularly given (1) the running of the statute of limitations and prejudice plaintiff will suffer absent the extension of time; (2) plaintiff’s (albeit unsuccessful) attempt to make service within the 120-day period; (3) plaintiff’s successful service on defendant only a month and a half after the 120-day period expired; and (4) the apparent lack of prejudice to defendant from the delay in service and in granting the extension, considering defendant presumably received notice of the improper service and of this action within the 120-day period, through counsel it eventually retained.

Accordingly, plaintiff’s objection to the R&R is sustained, and defendant’s motion to dismiss is denied. Defendant has 14 days to answer the complaint or to renew its motion to dismiss on other grounds. The parties shall complete all discovery within 120 days.

SO ORDERED.

/s/
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
July 16, 2013